

District's Exhibit No. 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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CSX TRANSPORTATION, INC.,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Civil Action No1
	:	1:05-DV-00338
ANTHONY A. WILLIAMS and	:	
DISTRICT OF COLUMBIA,	:	Hon. Ellen Segal
	:	Huvelle
Defendants.	:	
----- X	:	

Washington, D.C.
Friday, March 4, 2005

The deposition of JOSEPH C. OSBORNE, JR., called for examination by counsel for Defendants, pursuant to notice, in the offices of the Attorney General for the District of Columbia, Sixth Floor, 441 4th Street, N.W., Washington, D.C., convened at 9:12 a.m., before Emma N. Lynn, a Notary Public in and for the District of Columbia, when were present on behalf of the parties:

APPEARANCES:

On Behalf of Norfolk Southern
Railway Company and the
Deponent:

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C O N T E N T S

WITNESS

EXAMINATION BY COUNSEL FOR
PLAINTIFF DEFENDANTS

JOSEPH C. OSBORNE, Jr.

By Mr. Caspari

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EXAMINATION BY COUNSEL FOR
THE SIERRA CLUB

By Mr. Blitz

109

By Mr. Dougher

140

E-X-H-I-B-I-T-S

OSBORNE DEPOSITION

MARKED

No. 1

7

No. 2

31

No. 3

41

No. 4

120

(All Exhibits retained by Ms. Mullen.)

1 Q. I don't think I asked this yet. I
2 apologize if I did.

3 Other than the data provided you by Mr.
4 Plain and Mr. North, were there any other
5 documents used by you in the preparation of this
6 affidavit?

7 A. No.

8 Q. Have you read the D.C. ordinance that
9 is at issue in this case?

10 A. No, I have not.

11 Q. Do you have an understanding through
12 some other means as to prescriptions of the D.C.
13 ordinance at issue?

14 A. Yes, I do, from conversation with my
15 attorneys.

16 Q. Other than conversations with your
17 attorneys, has anybody else apprised you of the
18 contents of the D.C. ordinance?

19 A. Not that I'm aware of. Let me just add
20 one addendum. I have read some press reports
21 about the ordinance. I don't remember which ones.
22 But that would be another form of information

1 aside from our attorneys, how I would know
2 something about this.

3 Q. From the press reports what did you
4 glean that the D.C. ordinance, what type of
5 traffic it proscribed?

6 A. I understood that it proscribed
7 hazardous materials shipments within a certain
8 boundary or distance or certain territory within
9 the limits of Washington, D.C.

10 Q. To your knowledge --

11 A. I'm sorry. By rail. Let me add that
12 qualifier.

13 Q. To your knowledge does the D.C.
14 ordinance, if enforced, affect NSR's
15 transportation of hazardous materials through the
16 District.

17 MR. MOATES: I am going to object to
18 the premise of the question because the premise
19 hasn't been established that Norfolk Southern
20 transports any hazardous materials through the
21 District.

22 MR. CASPARI: That's a better way to

1 ask it.

2 BY MR. CASPARI:

3 Q. Does NSR transport hazardous materials
4 through the District?

5 A. Currently, no.

6 Q. To your knowledge when was the last
7 time NSR transported materials that would be
8 banned under the D.C. ordinance through the
9 District?

10 A. I can't answer that for two reasons:
11 One, I don't know; but, two, I still don't know
12 what the population of banned materials is.

13 Q. To your knowledge does NSR have any
14 plans, active plans to transport hazardous
15 materials that may or may not be banned through
16 the District?

17 A. None to my knowledge.

18 Q. Sir, is it your understanding that
19 chlorine and liquid propane gas fall under the
20 D.C. ordinance?

21 A. I don't know.

22 Q. I am looking at paragraph 6, just for

1 one?

2 A. Sure. You said hazardous materials
3 either at Petersburg or at Philadelphia. We
4 interchange hazardous material traffic with CSX at
5 Philadelphia. And I'm citing an example that I am
6 aware of. But that traffic goes to a point that
7 is well north of Philadelphia.

8 Q. When you interchange, is it going from
9 Norfolk Southern to CSX or vice-versa?

10 A. It is going from Norfolk Southern to
11 CSX.

12 Then your second question was, would it
13 use the route that I drew on Exhibit 3 that
14 originated on CSX. And I'm not sure that there is
15 any. I don't know, but I am not sure.

16 Q. Your Philadelphia example, the route
17 that you are referring to, it goes to a point
18 north, is that correct?

19 A. Yes.

20 Q. Did it travel this route in reaching
21 Philadelphia as identified in Osborne 3?

22 A. No. It originates in the greater

1 identified as the subset?

2 MR. BLITZ: Yes.

3 THE WITNESS: I would just point to the
4 statement, which is "would elect not to handle
5 certain hazardous products," some of which are
6 included in this 21,000 carloads that is
7 referenced in my affidavit, "at all absent a
8 common carrier obligation" because of the inherent
9 risk.

10 BY MR. BLITZ:

11 Q. Could you specifically identify which
12 "certain hazardous products" Norfolk Southern was
13 talking about there?

14 A. Norfolk Southern was talking about this
15 exhibit.

16 Q. Exhibit 4, top of page 4.

17 A. For instance, there are shipments of
18 chlorine that we would rather not handle that are
19 included in this population of 21,000 carloads
20 that, again, absent the common carrier obligation,
21 we would not want to handle.

22 Q. So wherever Norfolk Southern has the

1 option of not handling those shipments, it
2 doesn't. Is that fair?

3 A. No, because we don't have the option of
4 not handling it. Am I missing something?

5 Q. Well, let me ask this question then.
6 Are there certain chlorine shipments that Norfolk
7 Southern doesn't have the option of handling?

8 A. Are there certain chlorine shipments --

9 Q. Carried on Norfolk Southern's lines
10 that Norfolk Southern has the option of not
11 carrying on its lines?

12 A. No, because as it is said right here
13 and as I have said throughout this whole
14 deposition we have a common carrier obligation.

15 Q. And that includes chlorine shipments
16 that are transported from CSX's lines onto Norfolk
17 Southern's lines?

18 A. That is correct. That includes those.
19 We are still obligated to handle them.

20 Q. And just to be clear then, trackage
21 rights agreements don't permit CSX to transport on
22 Norfolk Southern's lines chlorine shipments that